

Environmental Protection Agency

§ 35.250

after notice and opportunity for a public hearing, determines that the reduction is attributable to a non-selective reduction of the programs of all executive branch agencies of the applicable unit of government. In order for the Regional Administrator to award grants in a timely manner each fiscal year, the Regional Administrator shall compare an agency's proposed expenditure level, as detailed in the agency's application for grant assistance, to that agency's expenditure level in the second preceding fiscal year.

(b) The Regional Administrator will not award section 105 funds unless the applicant provides assurance that the assistance will not supplant non-Federal funds that would otherwise be available for maintaining the section 105 program.

(c) The requirements of paragraphs (a) and (b) of this section shall not apply to Indian Tribes that have established eligibility pursuant to § 35.220(a) and intertribal agencies made up of such Tribes.

[47 FR 44954, Oct. 12, 1982, as amended at 60 FR 372, Jan. 4, 1995; 63 FR 7270, Feb. 12, 1998]

§ 35.215 Limitations.

(a) The Regional Administrator will not award section 105 funds to an interstate, intertribal or intermunicipal agency which does not provide assurance that it can develop a comprehensive plan for the air quality control region which includes representation of appropriate State, interstate, tribal, local, and international interests.

(b) The Regional Administrator will not award section 105 funds to a local, interstate, intermunicipal, or intertribal agency without consulting with the appropriate official designated by the Governor or Governors of the State or States affected or the appropriate official of any affected Indian Tribe or Tribes.

(c) The Regional Administrator will not disapprove an application for or terminate or annul an award of section 105 funds without prior notice and opportunity for a public hearing in the affected State or area within tribal jurisdiction or in one of the affected

States or areas within tribal jurisdiction if several are affected.

[63 FR 7270, Feb. 12, 1998]

§ 35.220 Eligible Indian Tribes.

The Regional Administrator may make Clean Air Act section 105 grants to Indian Tribes establishing eligibility under paragraph (a) of this section, without requiring the same cost share that would be required if such grants were made to States. Instead grants to eligible Tribes will include a tribal cost share of five percent for two years from the date of each Tribe's initial grant award. After two years, the Regional Administrator will increase the tribal cost share to ten percent, as long as the Regional Administrator determines that the Tribe meets certain economic indicators that would provide an objective assessment of the Tribe's ability to increase its cost share. Notwithstanding the above, the Regional Administrator may reduce the required cost share of grants to Tribes that establish eligibility under paragraph (a) of this section if the Tribe can demonstrate in writing to the satisfaction of the Regional Administrator that fiscal circumstances within the Tribe are constrained to such an extent that fulfilling the match would impose undue hardship. This waiver provision is designed to be very rarely used.

(a) An Indian Tribe is eligible to receive financial assistance if it has demonstrated eligibility to be treated in the same manner as a State under 40 CFR 49.6.

(b) An Indian Tribe that has not made a demonstration under 40 CFR 49.6 is eligible for financial assistance under 42 U.S.C. 7405 and 7602(b)(5).

(c) The Administrator shall process a tribal application for financial assistance under this section in a timely manner.

[63 FR 7271, Feb. 12, 1998]

WATER POLLUTION CONTROL (SECTION 106)

§ 35.250 Purpose.

Sections 106 and 518 of the Clean Water Act authorize assistance to State and interstate agencies (as defined in section 502 of the Act) and to

eligible Indian Tribes to administer programs for the prevention, reduction, and elimination of water pollution, including programs for the development and implementation of ground-water protection strategies. Some of these activities may be eligible for funding under section 205 (g) and (j) of that Act. (See §§ 35.300 and 35.350.) Program requirements for water quality planning and management activities are provided in 40 CFR part 35, subpart G.

[47 FR 44954, Oct. 12, 1982, as amended at 54 FR 14358, Apr. 11, 1989; 59 FR 13817, Mar. 23, 1994]

§ 35.251 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

(a) The term *allotment* means the sum reserved for each State or interstate agency from funds appropriated by the Congress. The allotment is determined by formula based on the extent of the water pollution problem in the respective States. It represents the maximum amount of money potentially available to the State or interstate agency for its program grant.

(b) The term *program grant* means the amount of federal assistance awarded to a State or interstate agency under Section 106 of the Clean Water Act to assist in administering programs for the prevention, reduction and elimination of water pollution.

(c) The term *State* means a State, the District of Columbia (DC), the Commonwealth of Puerto Rico (PR), the U.S. Virgin Islands (VI), Guam (GU), American Samoa (AS), and the Commonwealth of the Northern Mariana Islands (CNMI).

(d) The term *interstate agency* means an agency that meets the requirements of Section 502(2) of the Clean Water Act (CWA) and which is determined to be eligible for receipt of a grant under CWA Section 106 and these regulations by the Administrator.

(e) The term *component* refers to one of the six factors selected for use in the Section 106 State allotment formula. Each component of the formula was selected based on its potential contribution to the extent of water pollution problems within the respective States

and to the workload of State water pollution control programs.

(f) The term *element* refers to one of the constituent factors used to provide greater specificity to a component in the Section 106 State allotment formula. Certain components are composed of two or more “elements.” For example, the nonpoint source component of the Section 106 State allotment formula is composed of an agricultural element, a logging element, and an abandoned mine element.

(g) The term *sub-element* refers to one of the constituent factors used to provide greater specificity to an element in the Section 106 State allotment formula. Certain elements are composed of two or more “sub-elements.” For example, the abandoned mine element of the nonpoint source component is composed of a soft-rock mining sub-element and a hard-rock mining sub-element.

(h) The term *funding floor* refers to the minimum amount of funding that a State will be allotted in any fiscal year.

(i) The term *maximum level of funding* refers to the ceiling on the amount of funding that a State can be allotted in any fiscal year.

[64 FR 23736, May 3, 1999]

§ 35.252 State and interstate allotments.

(a) *Allotments.* Each fiscal year funds appropriated for States under Section 106 will be allotted to States and interstate agencies on the basis of the extent of the pollution problems in the respective States. A portion of the funds available to States under the Section 106 Grant Program will be set-aside for allotment to eligible interstate agencies. For FY 2000 and subsequent years, the interstate set-aside will be set at the level of 2.6 percent of the total funds appropriated for States under the Section 106 Grant Program.

(b) *State allotment formula.* The Section 106 State allotment formula establishes an allotment ratio for each State based on six components selected to reflect the extent of the water pollution problem in the respective States. A funding floor is established for each State with provisions for periodic adjustments for inflation. The formula